

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

June 23, 2011

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Contested Case Request Regarding Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope

PETITIONER: Mo`oinanea, as represented by E. Kalani Flores

LANDOWNER: State of Hawai`i
Leased to the University of Hawai`i under General Lease S-1491

LOCATION: Mauna Kea Science Reserve, Ka`ohe Mauka, Hāmakua, Hawai`i

TMK: (3) 4-4-015:009

SUBZONE: Resource

BACKGROUND

On February 25, 2011 the Board of Land and Natural Resources (BLNR) approved Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope (TMT) at the Mauna Kea Science Reserve, Ka`ohe Mauka, Hāmakua, Hawai`i.

The Office of Conservation and Coastal Lands (OCCL) received seven written petitions for a contested case regarding the permit from Mo`oinanea (as represented by E. Kalani Flores), the Flores-Case `Ohana, Deborah Ward, Paul K. Neves (as himself and as representative of the Royal Order of Kamehameha I), Clarence Kukauakahi Ching, the KAHEA Environmental Alliance, and Mauna Kea Anaina Hou.

The petition on behalf of the Royal Order of Kamehameha I was subsequently withdrawn.

A Hearing on Standing was held on May 13, 2011. The Hearing Officer issued Minute Order 6 (**Exhibit 1**) on May 27, 2011 granting standing to the Flores-Case `Ohana (consisting of E. Kalani Flores and B. Pualani Case), Ching, KAHEA, Mauna Kea Anaina Hou, Ward, and Neves. The Hearing Officer recommended that the Board of Land and Natural Resources deny standing to Mo`oinanea.

Staff is presenting the Hearing Officer's recommendation to deny standing to Mo`oinanea to the Board for its consideration pursuant to HAR §31-1-31 PARTIES :

(g) If the hearing to determine parties to the contested case was not conducted by the board, and the person who conducted such hearing recommends that any agency or person requesting to be a party should not be allowed to participate in the contested case, such recommendation and the reasons therefore shall be immediately submitted to the board in writing. The requestor whose request is recommended for denial shall have the opportunity to file objections to the recommendation. Such recommendation shall be acted upon by the board as soon as practicable and shall be decided, by written order, not later than the commencement of the contested case hearing.

SOURCES OF STANDING

Contested cases are held when mandated by due process. A petitioner for a contested case has two potential sources of standing: when so stated in a statute or rule, or when the petitioner can show a property interest entitled to due process protection.

Hawai'i Administrative Rules (HAR) § 13-1-31(b) describes persons or agencies that shall be admitted as parties. Subsection 2 states:

(2) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

Pursuant to HAR §13-1-2 DEFINITIONS:

“Persons” means as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

PETITIONER’S ARGUMENTS

On February 11, 2011 OCCL received a petition signed by E. Kalani Flores on behalf of Mo’oinanea (**Exhibit 2**). The petition stated that Mo’oinanea was a nature spirit and guardian of Lake Waiau, who presently resides on the summit of Mauna a Wakea. The petition noted that she had never been consulted regarding the TMT or other projects on the mountain. She wishes “her expressed concerns be disclosed.”

On May 3, 2011 KAHEA filed a Pre Hearing Brief on behalf of all the petitioners. In regards to Mo’oinanea, KAHEA noted that there is no evidence that the applicants carried out consultations with either ancestral akua or spirits, whether directly or “indirectly through individuals with the ability to connect with them.” The petition stated that the Flores-Case `Ohana intended to serve as intermediaries with the ancestral akua and spirits, and to provide testimony on their behalf, as they were “cultural practitioners with direct ancestral connections to Mo’oinanea.”

KAHEA further argued that HAR §13-1-2 *define “petitioner” as the person on whose behalf a petition is made*, and that *the rules further define “person” as “appropriate individuals ... of any*

character other than agencies.” They conclude that Mo`oinanea should have standing as an individual.

At the Hearing on Standing Mr. Flores presented a General Affidavit stating that Mo`oinanea had *authorized members of the Flores-Case `Ohana ... to serve in the capacity as her Agents to have full power and authority to act on her behalf* (**Exhibit 3**).

Mr. Flores presented the following arguments in oral testimony on behalf of granting standing to Mo`oinanea:

- Mo`oinanea resides on the summit and does have property interest in the land; and that the actions proposed will directly and immediately affect her
- That the term “person” expands beyond just human beings, that HAR §13-1-2 defines “persons” as “appropriate individuals,” and that according to Webster’s dictionary one of the definitions of individual “is a particular being or thing as distinguished from a class, species, or collection.”
- That Mo`oinanea is not truly a spirit; this is simply the closest English word to describe what she is. She is a *mo`o wahine*, which is a *wahine* (female, woman) and *mo`o* (reptile, dragon, serpent), and that Mo`oinanea has human blood in her that “establishes her humanity and physicality” (sic). She can transform into full human, but she’s at a different vibration so some cannot hear or see her.

Mr. Flores stated that, if the Board granted standing to Mo`oinanea but did not allow Mr. Flores to act as her representative, Mo`oinanea could either represent herself with the assistance of a cultural interpreter, or that they could seek professional counsel to represent her in order to be in accordance with Hawai`i Administrative Rules.

The sections of the transcript of the Hearing dealing with the issue of standing for Mo`oinanea are attached as **Exhibit 4**.

OBJECTIONS TO THE PETITION

On May 9, 2011 Counsel for the Applicant filed a Reply Brief on the Issue of Standing. Counsel objected to granting Mo`oinanea standing based on the following arguments:

- The Hawai`i Supreme Court has ruled that a plain English reading can be applied to the definition of “person” under the Hawaiian Administrative Procedures Act. A plain English reading here makes it clear that a spirit does not qualify. Webster’s Dictionary defines “person” as a “human being, individual,” while Black’s Law Dictionary defines “person” as “in general usage, a human being.” The petition asserts that Mo`oinanea is not a human being.
- To allow a spirit into the proceedings then it would lead to absurd results. If the Board allowed a spirit to be part of a contested case hearing, then it would presumably also have to allow, for example, deceased persons or even animals.
- The petitioners do not have the authority to appear on behalf of Mo`oinanea. HAS §13-1-10 *does not recognize an ancestral representative as an authorized representative. A person can only appear on his or her own behalf or represented by counsel.*

HEARING OFFICER'S CONCLUSION

The Hearing Officer concluded that "all the information presented indicated that Mo`oinanea is a spirit, not a person," and recommended that her petition be denied as she did not meet the requirements of HAR §13-1-21 and §13-1-2 to be admitted as a party.

FILING FEES

The original petition on behalf of Mo`oinanea requested a waiver of the filing fees.

Pursuant to HAR §13-1-30 RULES OF PRACTICE AND PROCEDURE, Filing Fee:

When an application involves a conservation district use permit (including a request for a permit, modification of a permit, violation of a permit, or revocation of a permit), the request for a contested case hearing shall be accompanied with a \$100.00 nonrefundable filing fee or a request for waiver of this fee. The chairperson may waive the filing fee for any person upon a showing of financial hardship.

On May 2, 2011 the Chair denied the petition: *The Department has not received any information from you demonstrating financial hardship for the petitioners ... the Mo`oinanea petition. We request that you submit the filing fees for both of your petitions before the Hearing on Standing on May 13, 2011. Failure to submit the filing fees may result in dismissal of the petitions.*

On May 11, 2011 Mr. Flores requested a waiver on behalf of Mo`oinanea a second time, writing that *Mo`oinanea is not employed and neither does she receive any revenues generated from the leases and activities on the summit of Mauna Kea Wākea. Therefore, it would be a financial difficulty and hardship for her to file this fee (Exhibit 5).*

As of June 8, 2011 the filing fees have not been paid on the Mo`oinanea petition.

RECOMMENDATION

That the Board of Land and Natural Resources deny the petition filed on behalf of Mo`oinanea in the contested case hearing regarding Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka`ohe Mauka, Hāmākua, Hawai`i based upon a) her lack of standing, and b) her failure to pay the filing fees.

Respectfully submitted,



Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



William J. Aila, Chairperson
Board of Land and Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In re Petitions requesting a Contested Case) DLNR Docket No. HA-11-05
Hearing Re Conservation District Use)
Permit (CDUP) HA-3568 for the Thirty) MINUTE ORDER NO. 6
Meter Telescope at the Mauna Kea Science)
Reserve, Ka'ohē Mauka, Hamakua District,)
Island of Hawai'i, TMK (3) 4-4-015:009)

MINUTE ORDER NO. 6

ORDER REGARDING STANDING

Petitions for a contested case hearing were timely submitted by the following:

1. Mo'oinanea
2. Flores-Case 'Ohana
3. Deborah Ward (Ward)
4. Paul K. Neves as an individual and as the representative of The
Royal Order of Kamehameha I (ROOK)
5. Clarence Kukauakahi Ching (Ching)
6. KAHEA: The Hawaiian Environmental Alliance (KAHEA)
7. Mauna Kea Anaina Hou (MKAH)

A hearing was held on the issue of standing on May 13, 2011. Present were Tim Lui Kwan and Ian Sandison representing Applicant University of Hawaii at Hilo, E. Kalani Flores representing the Flores-Case 'Ohana and Mo'oinanea, Deborah Ward, Clarence Kukauakahi Ching, Marti Townsend representing KAHEA and Kealoha Pisciotto representing MKAH.

There were no objections to the petitions of Ward, Ching, KAHEA and MKAH.

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Applicant objected to granting standing to Mo'oinanea on the grounds that Mo'oinanea is a spirit and not a person.

There was no objection to Paul K. Neves (Neves) as an individual but Applicant objected to his representation of ROOK on the grounds that there was no documentation of authority to act as the representative of ROOK. The Petitioner's Pre-Hearing Brief on the Issue of Standing in the Contested Case Hearing on Thirty Meter Telescope Conservation District Use Permit dated May 2, 2011 represented that the petition on behalf of ROOK was withdrawn.

The petition filed on behalf of the Flores-Case 'Ohana by E. Kalani Flores identified the members of the Flores-Case 'Ohana as E. Kalani Flores, B. Pualani Case, Hawane Rios and Kapulei Flores. During the hearing regarding standing, E. Kalani Flores represented that Hawane Rios and Kapulei Flores were withdrawn as members of the Flores-Case 'Ohana for purposes of the petition to participate in this contested case proceeding.

Based on the record, the briefs, the representations and agreements made at the hearing on standing and the arguments of the Applicant and Petitioners,

It is hereby ordered as follows:

1. Clarence Kukauakahi Ching, KAHEA, Mauna Kea Anaina Hou, Deborah Ward and Paul K. Neves shall be admitted as parties.
2. The Flores-Case 'Ohana consisting of E. Kalani Flores and B. Pualani Case shall be admitted as a party. Either E. Kalani Flores or B. Pualani Case may act as the representative of the Flores-Case 'Ohana provided that only one of them may serve as representative at any given hearing.

It is hereby recommended that the Board of Land and Natural Resources deny the petition filed on behalf of Mo'oinanea. All of the information presented indicated that Mo'oinanea is a spirit, not a person. Mo'oinanea does not meet the requirements of Hawaii Administrative Rules § 13-1-31 and § 13-1-2 to be admitted as a party. The term "individual" which is used in the definition of "person" in Hawaii Administrative Rules § 13-1-2 does not include spirits.

DATED: Honolulu, Hawaii; May 27, 2011.

A handwritten signature in black ink, appearing to read "Paul S. Aoki", is written over a horizontal line.

PAUL S. AOKI
Hearings Officer



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Mo'oinanea et al. (represented by E. Kalani Flores & Kapulei Flores)	2. Contact Person E. Kalani Flores	
3. Address P.O. Box 6918	4. City Kamuela	5. State and ZIP HI 96743
6. Email ekf808@hawaiiantel.net	7. Phone 808 936-4379	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

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C. SUBJECT MATTER

17. Board Action Being Contested

Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope by the University of Hawaii at Hilo, at Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua District, Island of Hawai'i, TMK: (3) 4-4-015:009

18. Board Action Date

February 25, 2011

19. Item No.

K 1.

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

The petitioner, Mo'oinanea, nature spirit and guardian of Lake Waiau presently resides on the summit of Mauna a Wakea. She has been a significant figure in both oral and written traditions. In the TMT FEIS document, there are numerous references regarding the ancestral akua and spirits such as Mo'oinanea along with their connections to the sacred landscape on the summit of this mountain. However, she has never been previously consulted regarding this and other projects on this sacred mountain. Therefore, she wishes her expressed concerns to be disclosed.

21. Any Disagreement Petitioner May Have with an Application before the Board

A Conservation District Use Permit (HA-3568) for the proposed Thirty Meter Telescope (TMT) should not be granted at this time for the following reasons.

The TMT Final Environmental Impact Statement (FEIS) is an incomplete document as it has failed to consider and/or disclose the adverse impacts upon the ancestral akua (gods, goddesses, deities) and spirits connected to the summit of Mauna a Wakea.

Thus, without this disclosure and consultation, this FEIS is incomplete and deficient. As such, this permit should not be approved at this time.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

Non-approval of this CDUA at this time.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Participation in this proceeding would provide insight not previously disclosed in this CDUA. This information is significant in order to avoid obstructing the piko/portal on the summit of Mauna a Wakea that connects with Ke Akua (The Creator) and 'Aumakua (Ancestors). This is a major portal for the life forces that flow into this island.

In addition, consultation and direct communication between intermediaries and those of the ancestral realm associated with these places was an essential and integral part of the process so as not to create a physical and/or spiritual disturbance, disconnection, or imbalance between man and his akua, and between man and his environment.

The proposed construction will affect the weather patterns that are the elemental forces connected with the ancestral akua and spirits on the mountain and of the surrounding areas. In addition, the impacts of the proposed construction of that immensity on an area once pristine, still the purest, the most sacred of all of Hawai'i will bring much change, none of which will be positive for the health and well being of this island and the general public.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

This petitioner has a substantial interest in this matter, resides on the summit of Mauna a Wakea, and can demonstrate that she and others will be directly and immediately affected by the requested action. Likewise, her interest in the proceeding is clearly distinguishable from that of the general public.

This petitioner is further identified as an appropriate individual under the definitions of "Person" in Section 13-1-2, HAR.

☐ Check this box if Petitioner is submitting supporting documents with this form.

☐ Check this box if Petitioner will submit additional supporting documents after filing this form.

E. Kalani Flores

Petitioner or Representative (Print Name)



Signature

Feb. 23, 2011

Date

GENERAL AFFIDAVIT

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DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

E. Kalani Flores, ("Affiant") makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

Mo'oinanea has authorized members of the Flores-Case 'Ohana (including, but limited to E. Kalani Flores, B. Pualani Case, Hawane Rios, and Kapulei Flores) to serve in the capacity as her Agents to have full power and authority to act on her behalf for the protection of the sacred landscape of Mauna a Wākea. This power and authority shall authorize her Agents to manage and conduct all of her affairs and to exercise all of her legal rights and powers in regards to any matter herein. Her Agent's powers shall include, but not be limited to, the power to:

1. Articulate her testimony and factual accounts as well as voice her concerns and views.
2. Engage in any administrative or legal proceedings or lawsuits in connection with any matter herein.
3. Prepare, sign, and file documents with any governmental body, court, or agency.
4. Employ or obtain professional and business assistance as may be appropriate, including, but not be limited to counsel.

FURTHER AFFIANT SAYETH NAUGHT.


Signature of Affiant

Subscribed and sworn to before me this

11 day of May, 11

Print Name: LAURA A. CAMARA

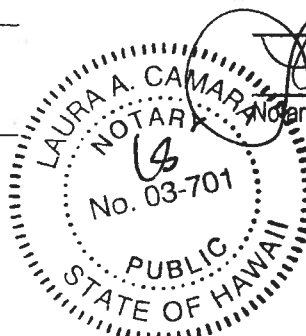
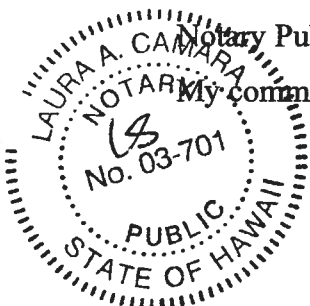
Notary Public, State of Hawaii

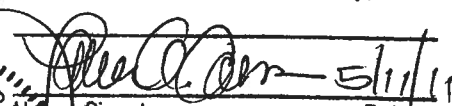
My commission expires: 11/30/11

Doc. Date: 5/11/11 # Pages: 1

Notary Name: LAURA A. CAMARA 3 Circuit

Doc. Description: General Affidavit




Notary Signature Date: 5/11/11

1 However, we believe that Mo'oinanea has the right,
2 according to law, to be considered in this petition
3 as a petitioner for the contested case hearing for
4 the following reasons.

5 First of all, according to HAR Section
6 13-1-31 states that persons can be admitted as a
7 party if they have some property interest in the
8 land, who lawfully reside on the land, and it
9 continues on.

10 Lawfully reside on the land who are
11 adjacent property owners, or who otherwise can
12 demonstrate that they will be so directly and
13 immediately affected by the requested action that
14 their interest in the proceeding is clearly
15 distinguishable from that of the general public,
16 shall be admitted as parties on timely application.

17 So we contend that, one, Mo'oinanea does
18 have property interest in the land and she does
19 reside on the land on the summit of Mauna a Wakea
20 also referred to as Mauna Kea.

21 Secondly, that the actions being proposed
22 by the applicants will directly and immediately
23 affect her. And, additionally, that her interests in
24 this proceedings is clearly distinguishable from any
25 of those of the general public.

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1 Case?

2 MR. FLORES: I think in fairness, this is
3 supposed to be for the lay people to be able to come
4 into the contested case hearing, I think that's the
5 best solution at the moment, and it doesn't create
6 any other burden upon anybody, any other parties in
7 this case. And it's fair enough to provide that
8 representation on behalf of the Flores-Case Ohana.

9 HEARINGS OFFICER AOKI: So that would work
10 for you, right? Designate you as an association?

11 MR. FLORES: Yes.

12 MS. PISCIOтта: Mauna Kea Anaina Hou
13 support that.

14 MR. CHING: Support.

15 MS. WARD: Ward supports that.

16 MS. TOWNSEND: We support that.

17 HEARINGS OFFICER AOKI: Moving on to the
18 next standing question.

19 MR. FLORES: The next, regarding the
20 petition for Mo'oinanea.

21 So for standing for Mo'oinanea, of course
22 the applicant is opposed to that particular petition.
23 We can see why. There's probably no precedent in
24 other contested case hearing of a petition being
25 filed on behalf of someone such as Mo'oinanea.

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1 And so under those reasons for being
2 admitted, we say that she meets those standards for
3 being admitted as a party to this case.

4 Secondly, based upon HAR Section 13-1-2
5 under the definition of persons, that we believe that
6 it is broad and inclusive enough to admit Mo'oinanea
7 as appropriate individual.

8 The argument that was put forth by the
9 applicant, basically the arguments that Mo'oinanea is
10 not a person, that is their argument. However, for
11 inclusion into a contested case hearing, there is a
12 definition provided in that section, person as
13 defined in that section.

14 So I'm referencing Hawaii Administrative
15 Rules Title 13 from the Department of Land and
16 Natural Resources, subtitle 1, administration,
17 chapter 1, Rules of Practice and Procedure, which
18 covers the contested case hearing as well.

19 In Section 13-1-2, under definitions it
20 states: That person or persons means as appropriate
21 individuals, partnerships, corporations, associations
22 or public or private organizations or any character
23 other than agencies.

24 So you look at the term "person", it
25 expands beyond just a human being. Person includes

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1 other entities such as organization, associations.

2 Specific to Mo'oinanea we're saying her
3 definition of a person meets the definition as
4 identified as appropriate individual. So in
5 definitions put forth, the definition we're looking
6 at really what is a definition of an individual.

7 And according to Webster's dictionary as
8 such, several definitions listed for an individual.
9 One of the definitions for individual is a particular
10 being or thing as distinguished from a class, species
11 or collection.

12 Another definition for individual, a single
13 organism as distinguished from the group. Another
14 definition for individual, a particular person.
15 Another definition for individual, an indivisible
16 entity.

17 Under the definition of individual we
18 believe Mo'oinanea can be identified as a person.

19 To go further beyond that, Mo'oinanea in
20 the Hawaiian context is a mo'o wahine, and mo'o is
21 spelled M-O 'okina O, wahine, W-A-H-I-N-E.

22 If you look in the Hawaiian definition you
23 won't find a definition for mo'o wahine. Mo'o wahine
24 is the term used for Native Hawaiians, Kanaka Maoli
25 Hawaiians families who have that associated

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1 connection or account of individuals such as
2 Mo'oinanea.

3 A mo'o wahine is a wahine, female, a woman,
4 is the definition of wahine. A mo'o is one who also
5 is of a reptilian, a dragon, a serpent form or other
6 forms as such. So when you put them together, that
7 is who mo'o wahine is.

8 We also say Mo'oinanea, who lives on the
9 mountain does have human blood in her. She does have
10 a genealogy. We have a genealogy for Mo'oinanea that
11 extends back four generations. We can provide
12 information showing that she has parents, the names
13 of her parents, the names of her grandparents and
14 names of great grandparents which establishes the
15 genealogy just like other individuals have a
16 genealogy.

17 In that genealogy also she does have human
18 blood as part of her mo'o blood from one of her
19 genealogy line. So she does have a human physical
20 characteristic connected to her. She has a
21 physicality to her. And for those who are not able
22 to see her or who are lacking the understanding of
23 her, we provide a picture of her as she revealed
24 herself to one who does portraits as such
25 (indicating).

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1 So she has a physicality to her, and she
2 has presented her physicality to her. She also has
3 presented her voice from her to us family members of
4 the Flores-Case Ohana.

5 So there's an argument by the applicant
6 that there's a case where animals do not have
7 standing in cases in court. We totally agree that
8 animals do not have standing in cases, but we also
9 state that Mo'oinanea is not an animal.

10 The difference between animal and
11 individual, individual has ability to determine what
12 is right and wrong. The individual has ability to
13 have a consciousness to discuss, to articulate, and
14 to make decisions. Animal does not have that
15 ability. And so we're saying Mo'oinanea should not
16 be classified as animal. So that argument that she's
17 an animal, does not have a right in this hearing, we
18 say that she is not an animal.

19 There is also a reference in by the
20 applicant that allowing them is just like allowing a
21 deceased person to be part of the proceedings, and we
22 say she's not a deceased person, she is not a spirit
23 as a deceased person.

24 And we understand that all men don't have
25 that understanding of individuals such as Mo'oinanea,

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1 do not have the understanding of what, or in the
2 cosmology of things, and that's why we are here, come
3 forward, because there's a lack of understanding of
4 what is on the mountain itself.

5 And, however, in all the documents
6 submitted on behalf of applicant where, in their
7 final EIS, they all make reference to those on the
8 mountain such as Mo'oinanea. They make reference to
9 the traditional accounts of them. They make
10 reference in describing them. And with that in mind,
11 there are accounts, and there are a basis for
12 establishing their existence.

13 The question we put forth here is whether
14 she can be admitted as an individual. And we believe
15 that she has the ability to be included as an
16 individual. And that is one of the points that was
17 being made, one of the arguments being made of the
18 applicant that she is not a person.

19 HEARINGS OFFICER AOKI: Thank you. Mr.
20 Lui-Kwan.

21 MR. LUI-KWAN: With all respect to Mr.
22 Flores, we're not here to argue whether or not he
23 actually believes, we can take him at his word that
24 he actually believes that Mo'oinanea is an entity.

25 But, again, we point to the definition of

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1 person. We point to the precedents in terms of
2 whether or not a spiritual being, or a being that is
3 not a living organism, or legal entity such as any of
4 the other entities he's described.

5 And, again, we believe it's a matter of
6 law. We believe we covered it in our brief. We do
7 not believe that -- we leave it to the discretion of
8 the department on whether or not they would look at a
9 more expansive definition for a person in this
10 proceedings.

11 But, again, our position is legally, under
12 the definition provided in the rules Mr. Flores
13 referred to, Mo'oinanea is not a person.

14 And this argument that she should be
15 admitted because she has a lawful property interest,
16 or that the proposal would immediately affect her
17 interest. Again, this is a threshold hearing here
18 whether or not that entity falls into the definition
19 of a person. If it does not, then it doesn't matter
20 about the property interest, doesn't matter about
21 impact. So we believe it's a threshold issue. We
22 believe it's a legal issue.

23 MS. PISCIOтта: I would like to just speak
24 in support of Mo'oinanea petition as Mauna Kea Anaina
25 Hou.

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1 There's a couple points that I wanted to
2 make. First, as Kalani pointed out, the University
3 discusses these entities in the context of proving,
4 attempting to prove that they are protecting these
5 cultural beliefs and religious beliefs.

6 So the issue in this contested case does
7 involve the question of our religious beliefs and
8 uses, or religious practices, put it that way, which
9 include the practice of honoring Mo'oinanea.

10 From a Hawaiian world view and cosmology,
11 it can be said that the question is, the question of
12 it being an intermediary, for example, or to have an
13 ohana represent her interest.

14 It can be said that any kumu hula are some
15 really good hula dancers who are actually the
16 embodiment of the spirit known as Laka. In fact,
17 when we dance hula, that is what you're attempting to
18 do is to be the perfect embodiment of the Goddess
19 Laka.

20 Also part of our cultural belief is that
21 things that are of the spirit world also have a human
22 form or physical form, those are called kino lau,
23 divine bodily forms, so they can take the form of
24 animals, they can take the form of plants, they can
25 take the form of mist, for example, snow, water, all

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1 of those things.

2 And as Kalani pointed out, Mo'oinanea has a
3 genealogy. It's one of the primary genealogies of
4 Hawaiian people. She also has descendants and
5 parents. She begins at the place where our genealogy
6 begins in the mystical realm.

7 And I just wanted to add that there is some
8 parts of western court system that recognize spirit
9 also. For example, the swearing truth, the oath of
10 truth before -- I don't believe they do that any
11 more -- but it was to hold your hand on the bible and
12 swear to tell the truth so help you God. So God was
13 recognized, the All Mighty.

14 There's also western recognition through
15 major religions such as Catholicism, where the pope
16 his self has grace and divine grace because he is an
17 intermediary between the spirit of God and the Holy
18 Spirit and the practitioners of Catholicism.

19 And in working to protect the sacred nature
20 of the mountain, these are the cultural and religious
21 ideals or beliefs that construct this religion. And
22 it's understandable, as Kalani said, we understand
23 the difficulty in possibly understanding the human
24 construct.

25 However, it goes to the fundamental basis

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1 of our religious beliefs which is in the construct of
2 this legal system. And so we want to say we support
3 Kalani's ohana and we support Mo'oinanea because
4 actually culturally for us to deny her a place would
5 be a very major pono'ole, unrighteous.

6 So we do support that, and we hope that it
7 can be construed in the proper spirit in which it is
8 offered. Mahalo.

9 HEARINGS OFFICER AOKI: Anything else?

10 MR. FLORES: So just to conclude. Lastly
11 is that the reason why the Flores-Case Ohana entered
12 into this contested case hearing, the reason why we
13 went forward, because we were prompted from those on
14 the mountain.

15 And those on the mountain we are referring
16 to as Mo'oinanea, one of them which has a genealogy
17 connection to our family. She came forth and
18 prompted us that on the mountain there's things
19 seriously happening, and she asked for assistance.
20 And so we brought forth her in as a petitioner
21 because we believe that she does -- she is an
22 individual.

23 She has human and other blood to her that
24 establishes humanity and physicality. She does
25 reside on the mountain and she will be directly

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1 affected by what is happening on the mountain.

2 In addition to that, we truly understand
3 that this may be a concept that many cannot
4 understand or even grasp in this particular case.
5 But there are many different types of spirits, and a
6 deceased spirit is distinctly different from
7 Mo'oinanea.

8 You could say she's a spirit, but yet she's
9 not. She's, in the petition, described as a nature
10 spirit because, that's the only English terminology
11 that can be placed on that. Actually I'll say she is
12 a mo'o wahine, in the true essence that really
13 describes who she is.

14 So in essence she's not really a spirit,
15 she is an individual. She has a genealogy. She has
16 humanity connected to her, it's just that she
17 resonates at a different vibration, and at a
18 different vibration which some are not open to seeing
19 or hearing that particular vibration. She does live
20 on the mountain.

21 She's unlike other type of spirits that are
22 wandering here and there in another form. She has a
23 body to her. She can transform into a full human
24 form at times, or she can transform into a full mo'o
25 form at times, or other times she can also transform

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1 in part human and part mo'o part, she has that
2 ability of transformation.

3 And we understand that due to lack of
4 understanding of this, and lack of being open, that
5 not all can grasp that concept. And so we just -- we
6 stand by the argument that she is an individual, she
7 has a place in here.

8 And to further this, I'm also going to
9 present a general affidavit. I'll read it as such.

10 In the State of Hawaii, County of Hawaii,
11 E. Kalani Flores (Affiant) makes this his statement
12 and general affidavit upon oath and affirmation of
13 belief and personal knowledge that the following
14 matters, facts and things set forth are true and
15 correct to the best of his knowledge.

16 Mo'oinanea has authorized members of the
17 Flores-Case Ohana (including, but not limited to E.
18 Kalani Flores, B. Pualani Case, Hawane Rios, and
19 Kapulei Flores) to serve in the capacity as her
20 agents to have full power and authority to act on her
21 behalf for protection of the sacred landscape of
22 Mauna a Wakea. This power and authority shall
23 authorize her agents to manage and conduct all of her
24 affairs and to exercise all of her legal rights and
25 powers in regards to any matter herein. Her agents'

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1 powers shall include, but not be limited to, the
2 power to:

3 One, articulate her testimony and factual
4 accounts as well as voice her concerns and views.

5 Two, engage in any administrative or legal
6 proceedings or lawsuits in connection with any matter
7 herein.

8 Three, prepare, sign and file documents
9 with any governmental body, court or agency.

10 Four, employ or obtain professional and
11 business assistance as may be appropriate, including,
12 but not limited to counsel.

13 Further affiant sayeth naught. Signed by
14 E. Kalani Flores on May 11, 2011, and notarized by
15 Laura Camada.

16 So the other argument in this case was she
17 cannot represent herself. We say that she could have
18 standing, represent herself with the assistance of a
19 cultural interpreter. Not unlike if an applicant or
20 individual was in a contested case hearing, and if
21 they could not speak English, then a court would
22 appoint an interpreter, whether Ilocana or Spanish,
23 to interpret what is being said.

24 We are saying she can be here present and
25 have a cultural interpreter to be able to interpret

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1 what is being said, or questions that is posed to her
2 and what is her responses, so as such we offer that
3 as well.

4 If not, we're also looking at taking up
5 counsel for her. If there's an argument that she
6 needs counsel instead of representing herself, we're
7 saying we can provide counsel and will seek counsel
8 to represent her as such as the argument is that the
9 Flores-Case Ohana could not be a representative of
10 her as designated by law.

11 So we're saying that she could stand here
12 in present, but she is here present today, in this
13 room, and we could have a cultural interpreter to
14 interpret for her what is being said and what is
15 being asked of her; or two, we can also seek legal
16 counsel to represent her if that is necessary as
17 well.

18 And what I'm circulating now is the
19 affidavit stating as such, giving us the authority as
20 authorized by her for such a means of acquiring
21 counsel for or any other means of acquiring
22 assistance in this matter.

23 Unless there's further questions or
24 comments, that concludes our argument for having
25 included Mo'oinanea as an individual.

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1 MR. CHING: I have read numerous articles
2 and announcements from the applicant here that we all
3 know is not the real applicant, and the real
4 applicant who may have representatives in this room
5 about the sacredness of Mauna Kea.

6 And I bring that up because the question
7 is, why is Mauna Kea so sacred? Mauna Kea is sacred
8 because we all believe, and they have adopted the
9 idea that we have these gods who live on the
10 mountain. The gods are the people, are the
11 personages that bring sacredness to the mountain.
12 And the veneration and respect of practitioners, for
13 instance, who I'm one of, and there's others here,
14 and I believe that this is some kind of recognition
15 of the arguments that Mr. Flores is making.

16 For instance, in the CDUA, page five,
17 Poli'ahu, goddess of the snows of Mauna Kea is deity
18 most often associated with the summit. It goes on,
19 speaking about these goddesses including Poli'ahu,
20 Lili'oe, and a male Kukahau'ula, Waiau, as if they
21 were real people. So this seems to me that the
22 applicant does recognize that these personages or
23 whatever they are up there on the mountain.

24 Let me also add that, and Mr. Flores and I
25 don't agree, that animals have gotten standing in

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1 United States, western federal state course of law.
2 The Palila case, for instance, is one of them. So
3 whether, you know, I don't really buy this argument
4 that animals cannot have standing. They have some
5 kind of standing, I'm not sure what kind, but they
6 have some kind of standing. Maybe it's standing in
7 codes or something, I don't know.

8 But let me also point out that this is a
9 federal reserve note, \$1, and on the back of it, on
10 the back because the side with Washington I'm calling
11 the front, In God We Trust. So even the United
12 States, in an official piece of paper that they say
13 is good for paying off debts, recognizes that God is
14 indeed something, I'm not sure what, but if you can
15 tell me, then we'll both know. But he is recognized
16 on this federal reserve note. Thank you.

17 MR. LUI-KWAN: The capacity to sue or be
18 sued is a legal issue. And, again, I mean, I think
19 interesting Mr. Ching brings up the fact that George
20 Washington is on one side and God we Trust on the
21 other side. But, again, in other courts we have seen
22 the United States have got successfully sued or sued.

23 And, again, the fact that Mr. Flores claims
24 ancestral 'aumakua relationship to Mo'oinanea.
25 Again, I don't dispute the fact that he believes he

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1 has a genealogical connection and that Mo'oinanea has
2 a genealogy, but so does my deceased grandmother.
3 But, again, under the laws of our state and country,
4 deceased person may not sue or be sued in their name.
5 Same way I can't sue George Washington, even though
6 he's on the dollar bill, for that very reason.

7 MR. FLORES: In rebuttal, Mo'oinanea is not
8 a deceased spirit. There is different types of
9 spirit in the natural realm, elements. She is not a
10 deceased person. She is actually a living entity, a
11 living individual. She does have human blood in her,
12 and so she is not a deceased person, she's still
13 living. It's just that for some, because of her --
14 she's at a different vibration so some cannot hear or
15 see her, and some can hear and see her. So she's in
16 existence, but not as a deceased spirit.

17 HEARINGS OFFICER AOKI: I'm going to take
18 this under advisement and issue a decision on it as
19 part of -- at the same time as we do the prehearing
20 conference order.

21 MR. FLORES: Thank you for your assistance.

22 HEARINGS OFFICER AOKI: Let's take a break
23 before we do the prehearing conference.

24 MS. PISCIOTTA: I still have a standing
25 issue.

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May 3, 2011

TO: William J. Aila, Jr.
Chair, Board of Land & Natural Resources
c/o Department of Land & Natural Resources, State of Hawai'i
1151 Punchbowl Street, Room 130, Honolulu, HI 96813

FR: E. Kalani Flores *E. Kalani Flores*
P.O. Box 6918, Kamuela, HI 96743

RECEIVED
11 MAY -5 10:55
DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

RE: REQUEST FOR WAIVER OF FILING FEE FOR A CONTESTED CASE
Contested Case HA-11-05 Regarding Conservation District Use Permit (CDUP) HA-3568
for the Thirty Meter Telescope at Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmākua
District, Island of Hawai'i, TMK: (3) 4-4-015:009

Aloha e Mr. Aila,

This is a follow-up to your recent correspondence regarding our previous request for a waiver of filing fees of petitions for Contested Case HA-11-05.

We are withdrawing the request for a waiver filed on behalf of the Flores-Case 'Ohana petition. As such, we are submitting a check in the amount of \$100.00 for this petition.

However, we are requesting a waiver of the filing fee for the petition filed on behalf of Mo'oinanea, nature spirit and guardian of Lake Waiau. Mo'oinanea is a revered and significant figure in both oral and written native Hawaiian traditional accounts that have documented her connection to Mauna a Wākea. In addition, there are numerous references in the supporting documents referenced by the applicant of this CDUP acknowledging the ancestral *akua* and spirits such as Mo'oinanea along with their connections to the sacred landscape on the summit of this mountain. However, nowhere in these documents has it been cited that consultation has occurred directly with these ancestral *akua* and spirits or indirectly through individuals with the ability to connect with them regarding this project and past development on the summit of Mauna a Wakea. Therefore, they wish their expressed concerns to be disclosed. In a similar manner that our *kūpuna* have culturally connected with these ancestral *akua* and spirits, we have been prompted by them to have their voices heard. As such, members of the Flores-Case 'Ohana intend to serve as intermediaries with these ancestral *akua* and spirits to provide testimony on their behalf.

The Administrative Rules allow for Mo'oinanea to be represented in this contested case hearing. Haw. Admin. Rule §13-1-2 defines "petitioner" as the person on whose behalf a petition is made. The rules further define "person" as "appropriate individuals ... of any character other than agencies." In addition, Mo'oinanea is an individual who can articulate that she will be directly and immediately affected by this action and that she has an interest which is clearly distinguishable from that of the general public in the Mauna Kea lands under review by the BLNR affected by the approval of the UH/TMT Corporation's CDUP HA-3568.

Mo'oinanea is not employed and neither does she receive any revenues generated from the leases and activities on the summit of Mauna a Wākea. Therefore, it would be a financial difficulty and hardship for her to file this fee. Therefore, this a follow-up request to waive the filing fee for the Mo'oinanea petition. *Mahalo nui loa* for reconsidering this request in the essence of *aloha 'āina*.

EXHIBIT 5